

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL J. AUDETT,

Plaintiff,

v.

MARK SELING *et al.*,

Defendants.

Case No. C04-5497RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
NOVEMBER 11TH, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This matter comes before the court upon plaintiff's notice of dismissal. (Dkt. # 20). Defendants do not object to the dismissal. (Dkt. # 21). After reviewing plaintiff's notice, the undersigned recommends that the file be closed as the notice is proper.

Under Rule 41(a), a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal is a matter of right and can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

1 Procedurally, Mr. Audett's complaint has been served and the defendants have moved to dismiss.
2 The action was then stayed. There has been no answer or motion for summary judgment. Accordingly,
3 plaintiff's request should be GRANTED.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
5 the parties shall have ten (10) days from service of this Report to file written objections. *See also*
6 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of
7 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
8 72(b), the clerk is directed to set the matter for consideration on **November 11th, 2005**.

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10 DATED this 13th day of October, 2005.

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12 /s/ J. Kelley Arnold
13 J. Kelley Arnold
14 United States Magistrate Judge
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